

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

FARRIN HAWKINS,

Petitioner,

VS.

BRIAN WILLIAMS, SR., *et al.*,

## Respondents.

Case No. 2:14-cv-01421-GMN-PAL

## ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner.

13        This Court has conducted a preliminary review of the petition pursuant to Rule 4 of the  
14      Rules Governing Section 2254 Cases in the United States District Courts. The Court must dismiss a  
15      petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not  
16      entitled to relief in the district court.” Rule 4 of the Rules Governing Section 2254 Cases; *see also*  
17      *Hendricks v. Vasquez*, 908 F.2d 490 (9<sup>th</sup> Cir. 1990).

Petitioner challenges a 1989 criminal conviction in the Eighth Judicial District Court, in Clark County, Nevada. It appears that the petition was filed outside the AEDPA one-year limitations period, and is subject to dismissal on that basis. 28 U.S.C. § 2244(d)(1). The AEDPA statute of limitations has serious implications for petitioner. According to the petition, petitioner was convicted on July 20, 1989. Petitioner signed his federal habeas petition and dispatched it for mailing on August 20, 2014. The petition was filed well outside the AEDPA one-year limitations period.

25        Additionally, on the face of the federal petition, petitioner states that his grounds for relief  
26 were not exhausted in state court. A federal court will not review a state prisoner's petition for  
27 habeas relief until the prisoner has exhausted his available state remedies for all claims raised. *Rose*  
28 *v. Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b). A claim remains unexhausted until the

1 petitioner has given the highest available state court the opportunity to consider the claim through  
 2 direct appeal or state collateral review proceedings. *See Casey v. Moore*, 386 F.3d 896, 916 (9<sup>th</sup> Cir.  
 3 2004); *Garrison v. McCarthey*, 653 F.2d 374, 376 (9<sup>th</sup> Cir. 1981). A habeas petitioner must “present  
 4 the state courts with the same claim he urges upon the federal court.” *Picard v. Connor*, 404 U.S.  
 5 270, 276 (1971).

6 By order filed December 8, 2014, petitioner was informed that his petition appeared to be  
 7 both untimely and unexhausted. (ECF No. 4). Regarding the statute of limitations, petitioner was  
 8 given an opportunity to demonstrate either that he submitted his federal habeas corpus petition in a  
 9 timely manner, or that he is entitled to equitable tolling of the one-year limitations period imposed  
 10 by the AEDPA. Regarding exhaustion, petitioner was given an opportunity to demonstrate when  
 11 and how he exhausted his grounds for relief in state court. Petitioner was informed that his failure  
 12 to respond to the Court’s order would result in dismissal of this action. (ECF No. 5, at p. 3). *See*  
 13 *Herbst v. Cook*, 260 F.3d 1039, 1042 (9<sup>th</sup> Cir. 2001) (district court has authority to raise statute of  
 14 limitations *sua sponte* and dismiss petition on that ground “after the court provides the petitioner  
 15 with adequate notice and an opportunity to respond.”). “For a *pro se* petitioner . . . the court must  
 16 make clear the grounds for dismissal and consequences of failing to respond.” *Herbst*, 260 F.3d at  
 17 1043. This Court has provided petitioner with notice of the deficiencies of his petition, an  
 18 opportunity to provide an explanation regarding the untimeliness of his petition and his failure to  
 19 exhaust state court remedies, and was cautioned that his failure to respond to the Court’s order  
 20 would result in dismissal of the action. Petitioner failed to respond to the Court’s order, as he has  
 21 not made any demonstration regarding the untimeliness of his petition or his failure to exhaust the  
 22 claims in his petition. Accordingly, this action is dismissed.

23 **IT IS THEREFORE ORDERED** that this action is **DISMISSED WITH PREJUDICE** as  
 24 untimely.

25 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**, as reasonable  
 26 jurists would not find the dismissal of this action to be debatable or wrong.

27 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment accordingly.

28 **DATED** this 15th day of April, 2015.